

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Case Western Reserve University and International Brotherhood of Electrical Workers, Local Union 1377, AFL-CIO. Case 8-CA-27988

May 31, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Pursuant to a charge filed on January 23, 1996,¹ the General Counsel of the National Labor Relations Board issued an amended complaint on March 25, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the certification issued by the Regional Director on December 21, 1995, in Case 8-RC-15292. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the amended complaint.

On April 29, 1996, the General Counsel filed a Motion for Summary Judgment. On May 1, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On May 17, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

¹ The Respondent's answer admits receipt of the charge on or about January 24, 1996.

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, an Ohio not-for-profit corporation with an office and place of business in Cleveland, Ohio, has been engaged in the operation of a private nonprofit university. Annually, the Respondent, in conducting its business operations described above, derives gross revenues in excess of \$1 million, over \$50,000 of which it receives directly from points located outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

On October 31, 1978, the Union was certified as the exclusive collective-bargaining representative of the Employer's electricians A and B and lead electricians employed by it in its plant services department at its Cleveland, Ohio facility. Pursuant to an election held on November 11, 1995, among the Respondent's maintenance workers, on December 21, 1995, the Regional Director issued a Certification of Results certifying that the employees in the voting group had selected the Union to represent them and that the Union may bargain for those employees as part of the previously certified unit.

Based on the foregoing, the following employees of Respondent constitute a unit appropriate for purposes of collective bargaining:²

All full-time and regular part-time electricians A and B, lead electricians, and Maintenance Workers employed by the Respondent in its plant services department at its Cleveland, Ohio facility, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

² In its answer and response, the Respondent contends that the complaint incorrectly refers to "maintenance workers" rather than "Maintenance Workers," and the General Counsel acknowledges in the Motion for Summary Judgment that only the "Maintenance Worker" classification was in the voting group. Accordingly, per the Respondent's request, we have corrected this "clerical error" in our decision.

B. *Refusal to Bargain*

The Respondent's answer admits that the Union requested the Respondent to bargain with respect to the unit including the Maintenance Workers and that the Respondent has refused to do so. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Case Western Reserve University, Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Brotherhood of Electrical Workers, Local Union 1377, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time electricians A and B, lead electricians, and Maintenance Workers employed by the Respondent in its plant services department at its Cleveland, Ohio facility, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Cleveland, Ohio, copies of the attached notice marked "Appendix."³ Copies of the notice, on

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the

forms provided by the Regional Director for Region 8 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 23, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 31, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Brotherhood of Electrical Workers, Local Union 1377, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on

terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time electricians A and B, lead electricians, and Maintenance Workers employed by us in our plant services depart-

ment at our Cleveland, Ohio facility, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act, and all other employees.

CASE WESTERN RESERVE UNIVERSITY